

ROUTING AND TRANSMISSION SLIP

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REMARKS

To 3:

I believe information conveyed in the attached note from you to the DCI and DDCI would be helpful to them as they begin to produce "records" in their positions.

Thomas H. White

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Director of Information Services

Room No.—Bldg.

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OPTIONAL FORM 41 (R)

Prescribed by GSA

FPMR (41 CFR) 101-11.206

OIS 81-182/1

20 MAR 1981

DD/A Registry
81-0366/1

MEMORANDUM FOR: Director of Central Intelligence
 Deputy Director of Central Intelligence

FROM: Max Hugel
 Deputy Director for Administration

SUBJECT: Personal Papers vs. Official Records

DD/A REGISTRY
FILE: O + M

1. Last December, all Government agencies received a letter from the Archivist of the United States reminding officials of their responsibility, particularly during the Presidential transition, to properly distinguish official Agency records from personal papers. Recently, the Archivist sent a follow-up letter recommending that these requirements be brought to the attention of officials moving into top level positions in the new administration.

2. In keeping with the Archivist's recommendation, I have attached for your information a paper prepared for Admiral Turner in December, titled "Access by Former DCI's to Government Records," which outlines the distinctions between personal and official records. Also attached is a copy of the Archivist's recent letter and its attachment, GSA Bulletin FPMR B-106.

Signed

Max Hugel

Attachments:
 As stated

C/RSB/RMD/OIS
 Rewritten: DIS:THWhite:ydc (17 Mar 81)

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Distribution:

Original - DCI w/atts
 1 - DCI w/atts
 2 - DDCI w/atts
 1 - Executive Registry w/atts
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 1 - OIS Chrono

11 December 1980

Access by Former DCI's to Government RecordsPersonal Papers vs Official Records

Records of the U.S. Government may not be alienated or destroyed except under the provisions of 44 USC 33. These provisions require that agencies follow regulations promulgated by the Administrator of General Services, which include the Federal Property Management Regulations (FPMR) issued in 41 CFR 101-11. FPMR 101-11.202(d) (or 41 CFR 101-11.202-2(d)) provides that "Papers of a private or nonofficial character which pertain only to an individual's personal affairs that are kept in the office of a Federal official will be clearly designated by him as nonofficial and will at all times be filed separately from the official records of his office. In cases where matters requiring the transaction of official business are received in private personal correspondence, the portion of such correspondence that pertains to official business will be extracted and made part of the official files...."

Further guidance in GSA Bulletin FPMR B-106, paragraph 4b, provides that "The definition of official records involves materials made or received either under Federal law or in connection with the transaction of official business. The definition of personal papers covers material pertaining solely to an individual's private affairs. For example, correspondence designated 'personal,' 'confidential,' or 'private,' etc., but relevant to the conduct of public business, is an official record subject to the provisions of Federal law pertinent to the maintenance and disposal of these records. Official records are public records and belong to the office rather than to the officer."

FPMR B-106 further provides in paragraph 4d that "...a Government official may accumulate for convenience of reference extra copies [nonrecord] of papers and other materials which he or she has drafted, reviewed, or otherwise acted upon...[and] may be permitted to retain these extra copies, provided that retention would not (1) diminish the official records of the agency; (2) violate confidentiality required by national security, privacy, or other interests protected by law; or (3) exceed normal administrative economies."

In general, then, a government official may take with him any solely personal papers and any existing extra copies of unclassified official papers he has acted upon. Apparently, he even may reproduce copies for this purpose if doing so is considered not to exceed "normal administrative economies".

In regard to national security (classified) information, Executive Order 12065, section 4-301, provides that an agency (such as CIA) with jurisdiction over the information may grant access to persons (such as a former DCI) who "previously have occupied policy-making positions to which they were appointed by the President" provided that the agency:

Presidential Records

"Presidential records" are "...documentary materials...created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President." (44 USC 2201(2)). Presidential records do not include "...official records of an agency..." (44 USC 2201(2)(B)(ii)).

As CIA is not part of the Executive Office of the President (EOP), Agency copies of documents sent to or received from the President are retained or disposed of in accordance with Agency records control schedules. The special requirements governing disposition of or access to Presidential records do not apply to these copies.

A former DCI (or anyone else) may gain access to Presidential records by submitting a request to the Archivist of the United States (44 USC 2204(c)(1)). If access restrictions have been imposed, the person desiring access must either: (a) submit an appeal to the Archivist (44 USC 2204(b)(3)), or (b) be designated by the former President as his representative (44 USC 2205 (3)).

Access to records of a unit of the EOP (such as the National Security Council) that may have been placed in the physical custody of the Agency for safekeeping may be gained by submitting a request to the EOP unit concerned.

Post-employment Access and Use

Other than the requirements of Executive Order 12065 cited above, we are aware of no provision of law or directive that grants special status to a former DCI. Strictly speaking, a former DCI is "just another former employee." He must honor his secrecy agreement and other contractual obligations incident to Agency employment. In particular, he must observe the requirement to submit for review by the Publications Review Board "...all writings and scripts or outlines of oral presentations intended for nonofficial publication...which make any mention of intelligence data or activities, or contain data which may be based upon information classified pursuant to law or Executive order."

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Granting all of the above, it seems reasonable to expect that circumstances may arise wherein furnishing information to a former DCI may be both in the best interests of the United States and consistent with the interests of national security. In such circumstances, it may be suitable for an appropriate official, such as the incumbent DCI, to authorize access to this information. In considering whether to grant such access, of course, due regard should be given to consistency in the Agency's handling of requests from the public through FOIA and other channels.

"(a) makes a written determination that access is consistent with the interests of national security; (b) takes appropriate steps to ensure that access is limited to specific categories of information over which that agency has classification jurisdiction; (c) limits the access...to items that the person originated, reviewed, signed or received while serving as a Presidential appointee."

Any official records a former DCI may have brought with him from another agency should be handled in accordance with the requirements of that Agency.

Special CIA Requirements

In addition to the legal requirements cited above, a former DCI must comply with the provisions of Agency regulations. Our Security regulations and Information and Records Management regulations generally incorporate the above provisions relative to both classified and unclassified information. In addition, the Information and Records Management regulations incorporate requirements of the Freedom of Information Act and the Privacy Act, and the Security regulations incorporate requirements of the National Security Act of 1947 and the CIA Act of 1949.

Taken together, these regulations require in general that we withhold information, even if it is not national security classified, that may reveal Agency organization structure or employee names. Furthermore,

[redacted] states: "All employees are prohibited from using official data for any purpose other than in the performance of their official duties for or on behalf of the Agency. Official data is not to be held in personal files or set aside for personal use or benefit." And

[redacted] states "Official data is not to be copied or removed from the files of the Agency for release outside the Agency except by those officials authorized through chain of command by the Director of Central Intelligence.

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In summary, the foregoing requirements of law and regulation provide that:

- (a) An official file copy of an Agency document may not be removed from the Agency under any circumstances;
- (b) A duplicate of an official file copy may be removed only if:
 - (1) the removal is not for the purpose of personal benefit and,
 - (2) the document is determined to be nonsensitive.
- (c) A personal document may be removed only if:
 - (1) any official data within the document is also contained in official Agency files and,
 - (2) the document is determined to be nonsensitive.